

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : Case No. 1-20-00841

:
CRAIG B. DEIMLER,

WILLIAM OLIVER FISHER-DEIMLER,

Debtors :
:

Chapter 13

CRAIG B. DEIMLER, :
WILLIAM OLIVER FISHER-DEIMLER, :

Movants/Objectors, :
:

OBJECTION TO CLAIM #34

v. :
:

JOHN AND CINDY SIMPKINS, :
Respondents/claimants :

**RESPONDENTS' BRIEF IN OPPOSITION
TO DEBTORS' OBJECTION TO PROOF OF CLAIM**

AND NOW, this 21st day of December 2020, come John and Cynthia Simpkins (the "Respondents"), and explain to the Court why the Debtors' objection to their Proof of Claim ("POC") must be denied and dismissed, as follows:

FACTUAL AND PROCEDURAL BACKGROUND

Respondents wanted a reputable company to remodel their laundry room, kitchen and full bath. They found Deimler Family Construction through an on-line Google search. All of their contacts were with Debtor Craig Deimler. They signed a contract with Deimler Family Construction, which contract was prepared and handed to them by Debtor Craig Deimler. The contract is attached as pages 1-11 of Docket #112 (hereafter the "Contract"). Respondents made several payments under the Contract, including one on October 23, 2018, in the amount of \$12,000.00; that payment was endorsed on the back by Craig Deimler individually. See, page 28 of Docket #112. No payment was made payable to GCD Construction, Inc.

Due to the poor (or lack of) performance by Deimler Family Construction, Respondents were forced to hire and pay another contractor to rip out and redo the work for which they had contracted with Deimler Family Construction. Respondents did not make the final payment to Deimler Family Construction; rather, after paying the new contractor, they are out of pocket a net additional cost of \$130,000 (as set forth in their POC).

Debtor Craig Deimler filed his petition under Chapter 13 on March 4, 2020. Respondents filed their POC on May 12, 2020. Debtors filed an Objection to the POC on June 24, 2020, and Respondents filed their Response to the Objection on July 21, 2020. The Court held a status conference on September 23, 2020, during which it directed a briefing schedule relative to the objection to POC. This is the Respondents' Brief in Opposition to the objection to POC.

ISSUE PRESENTED

Whether the other party to the Contract is Debtor Craig B. Deimler or GCD Construction, Inc.?

Suggested response: Debtor Craig B. Deimler

LEGAL ARGUMENT

Debtors' Brief in Support of their Objection to the POC (Docket #110) attempts to make lemonade out of the lemons created by Debtor Craig Deimler, but it does not succeed.

The parties agree that the Contract is the relevant legal document in this case. Where they disagree on who is the other party. The Contract is between Deimler Family Construction as contractor (see p.9 of the Contract) and Respondents as the homeowners. The Contract does not identify GCD Construction, Inc. as the contractor; rather, as agreed by Debtors in their Brief, page 9 of the Contract identifies Deimler Family Construction as the Contractor. Also, the top of every page includes the logo for Deimler Family Construction. While the Contract does

authorize GCD Construction, Inc. to perform the work under the Contract, that is not the same as making GCD Construction, Inc. a party to the Contract.

So, the question is, who is Deimler Family Construction, the Contractor and other party to the Contract? Deimler Family Construction is a fictitious name owned by and registered with the Department of State to Debtor Craig Deimler. See, Exhibit "A" attached hereto and incorporated by reference herein. According to the State, Deimler Family Construction was registered as a fictitious name in 2015 and was still active at the time of filing of the instant case. The purpose of registering a fictitious name is so that it can be known who is operating under that name. Had GCD Construction, Inc. wanted to operate as Deimler Family Construction, it could have taken ownership of the fictitious name from Debtor Craig Deimler. GCD Construction, Inc. knew about fictitious names since it registered one, Deimler & Sons Construction, in 2012. See, Exhibit "B" attached hereto and incorporated by reference herein. However, GCD Construction, Inc. did not own the fictitious name Deimler Family Construction and therefore had no legal right to use or conduct business under that name.

Further, Debtor Craig Deimler held himself out to the public as the owner of Deimler Family Construction. See, Exhibit "C" attached hereto and incorporated by reference herein. Also, Deimler Family Construction advertised itself, but not as a part of GCD Construction, Inc. See, Exhibit "D" attached hereto and incorporated by reference herein.

Finally, and perhaps most importantly, if this Court finds the Contract to be ambiguous as to who is Deimler Family Construction, the Contractor, then the Contract as a written document must be construed against the drafter. Rusiski v. Pribonic, 515 A.2d 507, 510 (Pa. 1986); Central Transportation, Inc. v. Board of Assessment Appeals of Cambria County, 417 A.2d 144, 149 (Pa. 1980); Restatement (Second) of Contracts § 206 (1981). "Where a document is found to be

ambiguous, inquiry should always be made into the circumstances surrounding the execution of the document in an effort to clarify the meaning that the parties sought to express in the language which they chose.” Burns Manufacturing Co., v. Boehm, 356 A.2d 763, 766 n.3 (Pa. 1976). Here, the subject Contract was drafted by Debtor Craig Deimler; at no point did he ever tell the Respondents that the contract was with GCD Construction, but only Deimler Family Construction. Any ambiguity must be construed against Debtor Craig Deimler (and the interpretation he urges).

CONCLUSION

The Contract identifies Deimler Family Construction as the Contractor. Deimler Family Construction is a fictitious name registered to and owned by Debtor Craig Deimler. As such, Debtor Craig Deimler is the other party to the Contract and the filing of the POC in this case is proper.

WHEREFORE, the Respondents respectfully requests that this Honorable Court deny and dismiss the Debtors’ objection to their POC, and for such other relief as may be just and appropriate.

AUSTIN LAW FIRM LLC

By: /s/ Sara A. Austin

Sara A. Austin, Esq.
226 E. Market Street
York, PA 17403
717-846-2246
Supreme Ct. I.D. No. 59052
Counsel for Respondents

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Date: 06/29/2020

Business Name History

Name	Name Type
Deimler Family Construction	Current Name

Business Entity Details

Officers

Name	Deimler Family Construction
Entity Number	4360685
Entity Type	Fictitious Names
Status	Active
Citizenship	Domestic
Entity Creation Date	06/05/2015
Effective Date	06/05/2015
State Of Inc	PA
Address	6530 Derry St, Harrisburg PA 17111 Dauphin

Name	Craig B. Deimler
Title	OWNER
Address	6530 Derry St, Harrisburg PA 17111



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Date: 12/21/2020

Business Name History

Name	Name Type
Deimler & Sons Construction	Current Name

Business Entity Details

Officers

Name	Deimler & Sons Construction
Entity Number	4139320
Entity Type	Fictitious Names
Status	Active
Citizenship	Domestic
Entity Creation Date	10/09/2012
Effective Date	10/09/2012
State Of Inc	PA
Address	6530 Derry St Harrisburg PA 17111 Dauphin

Name	GCD Construction, Inc.
Title	OWNER
Address	6530 Derry St Harrisburg PA 17111

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Owner and Salesperson at Deimler Family Construction
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Deimler Family Construction

Penn State University

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CEO at Gentle ...



Earl Benton
Earl: Congrats on finishing up at CAI!



Charles: Congrats on your ...



Anthony Holt
Anthony: Sounds good Thank you

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Highlights



1 mutual connection

You and Craig both know Nick Bair

About

Laborer, project leader, sales person, production manager and now owner and President of Deimler Family Construction. My goal is to grow the company to a place where employees have a place for professional advancement no matter what level they come in to the company. In addition, I want the company to be profitable and stable so that it can be passed on to the next owners and beyond.

Specialties: Sales and Design of residential and light commercial buildings.

Experience



President

Deimler Family Construction
Apr 1994 – Present 26 yrs 6 mos



Member

Remodelers Advantage Inc.
1997 – 2010 13 yrs

Salesperson

Deimler & Sons
Apr 1994 – Jan 2008 13 yrs 10 mos

Salesperson

Deimler & Sons Construction
Apr 1994 – Jan 2008 13 yrs 10 mos

Education

EXHIBIT "C"

Penn

Penn State University
BS, Labor and Industrial Relations (HR)
1990 – 1994

Activities and Societies: Concert White Band Blue Band - Pep Band Phi Mu Alpha Fraternity

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Renovation 43

- p Endorsed by Christopher Wright, CR and 8 others who are highly skilled at this
- Endorsed by 4 of Craig's colleagues at Remodelers Advantage Inc.

Construction 39

- p Endorsed by Rob Baugher and 4 others who are highly skilled at this
- Endorsed by 3 of Craig's colleagues at Remodelers Advantage Inc.

Residential Homes 31

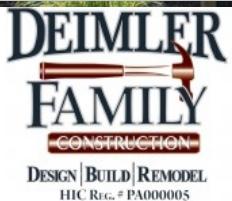
- p Endorsed by David Lupberger and 1 other who is highly skilled at this
- Endorsed by 3 of Craig's colleagues at Remodelers Advantage Inc.

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Website<http://www.deimlerfamilyconstruction....>**License #**

PA000005

Specializing In

- Design & Build Firms



Deimler Family Construction

Deimler Family Construction takes pride in providing high quality remodeling and renovation services. Craig Deimler and his team have satisfied the desires and needs of hundreds of customers through our exceptional additions, designs and remodeling services. Delivering exceptional kitchen and bathroom designs, as well as, room additions, outdoor renovations and basement remodeling services to our customers in Harrisburg, PA, Hershey, PA, Camp Hill and Mechanicsburg, PA is how we have become the preeminent Design Build firm in Central Pennsylvania [Less](#)

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EXHIBIT "D"

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 21st, 2020, a true and correct copy of the foregoing document was or will be served on the following via ECF:

Kara Gendron, Esq.
Counsel for Debtor

Charles J. DeHart, III, Trustee
Ch. 13 Trustee

/s/ *Sara A. Austin*